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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL No. 1144/2001

Appellant Ramlal s/o Kirtan Lohar, aged about 23 years, P.S. Gharghoda, r/o Deendayal Colony, Thimarapur, Raigadh

Vs.

Respondent State of Chhattisgarh, through the Police Station, Kotwali, Raigarh, Distt Raigarh (C.G)

Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure

D.B: Hon'ble Shri L. C. Bhadoo, &
Hon'ble Shri Sunil Kumar Sinha, JJ.

Appearance:
Smt. Sarita Sharma, counsel for the appellant.
Shri Satish Gupta, Dy.Govt. Advocate for the state

ORAL JUDGMENT
(21.9.2007)

The following judgment was delivered by
L.C.Bhadoo, J.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 7th November, 2001 passed by the Sessions Judge, Raigarh, in Sessions Trial no.77/2001 whereby the learned Sessions Judge after holding the accused appellant along-with co-accused Mayawati guilty for the commission of offence u/s 302 read with section 34 I.P.C., sentenced each of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the accused to undergo imprisonment for life and to pay a fine of Rs. 200/-, in default of payment of fine, to further undergo R.I. for two months.

(2) The case of the prosecution is that Neerabai (P.W.1) gave the First information Report Ex.P.2 in the police station Kotwali, Raigarh to the effect that she is residing along-with her husband Kasi Ram in Deendayal colony, Thimrapur, Raigarh, she is working as a labourer. Ghasi Ram is residing in her neighborhood. On 07.12.2000 at about 10.00 a.m., she was sitting in the court-yard of the house of Mankuwar, on hearing the voice of Sirmati she went on the spot, saw that Ghasi Ram was unconscious and his son Sanilal was weeping near the body of Ghasi Ram. Sanilal and Sirmati informed her that accused Mayawati & Ramlal left the house along-with their belongings, on which, she saw Mayawati near the drain. She called Mayawati, she replied that her husband is lying in a drunken condition, if he is dying let him die. On which, she alongwith Sirmati brought back Mayawati and Ramlal and asked them to take Ghasi Ram to the hospital, thereafter they took Ghasi Ram to Hospital but at about 6.45 p.m. in the evening he died. The smell of the liquor as also the insecticide was emanating from the place. Ramlal is residing at the house of Ghasi Ram since last 2-3 months. Ghasi Ram took some money on loan from Ramlal. At times, Ramlal after consuming liquor used to abuse Ghasiram and asked him to return his money. Ramlal is having

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	illicit relationship with the wife of Ghasi Ram. She enquired from the son of Ghasi Ram on which he disclosed that Ramlal and his mother had mixed something with the liquor which was consumed by Ghasiram. Ramlal gave liquor in a glass to his father and he himself took some liquor in stainless steel bowl. The deceased gave beating to his wife in village of Ramlal i.e., Teeboudi on account of illicit relationship between Mayawati and Ramlal. Mayawati and Ramlal administered poison to Ghasi Ram mixed with liquor. After receiving the report Ex.P.1, based on which F.I.R. Ex.P-2 was registered. The investigating Officer left for the scene of occurrence and he seized one stainless steel glass, one stainless steel bowl, one empty quarter bottle, one small Aluminum box containing *Mailthian*. Site Plan Ex.P.4 was prepared by him. Site Plan Ex.P.5 was prepared by Halka Patwari. The viscera of the deceased were seized under Ex.P.6. After giving notice to the Panchas (Ex.P.7) the inquest Ex.P.8 was prepared on the body of Ghasi Ram. The body of Ghasi Ram was sent for post mortem examination to K.G. Hospital, Raigarh, under Ex.P.9, where Dr.P.K. Gupta, Asst. Surgeon, conducted postmortem and prepared postmortem report (Ex.P.10). He opined that the cause of death was poisoning by some insecticide. The seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar under Ex.P.12, from where the F.S.L. report was sent on 21.2.2001. After completion of the investigation, the charge sheet was filed in the court of Chief Judicial Magistrate, Raigarh, who in turn	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

committed the case to the Sessions Judge, Raigarh, where the trial was conducted. The prosecution in order to establish the charges against accused persons examined 10 witnesses. The statement of the accused persons were recorded u/s 313 Cr.P.C., in which each of the accused denied the material appearing against them in the prosecution evidence, they stated that they are innocent and they have been falsely implicated in the crime.

(3) The learned Sessions Judge, after hearing the arguments of the respective counsel for the parties, convicted and sentenced the appellant along-with co-accused Mayawati, as aforementioned.

(4) We have heard Smt. Sarita Sharma, counsel for the appellant and Shri Satish Gupta, Dy.Govt. Advocat for the State.

(5) The case of the prosecution is that Ghasi Ram died on account of administration of poison. In the case of ***Sharad Birdhichand Sarda, Appellant -vs- State of Maharashtra reported in AIR 1984 S.C. 1622***, the Apex Court held that in case of murder by poisoning, the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

(i) there is a clear motive for an accused to administer poison to the deceased;

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(ii) that the deceased died of poison said to have been administered;

(iii) that the accused had the poison in his possession

(iv) that he had an opportunity to administer the poison to the deceased.

(6) As far as the motive is concerned, P.W.3 Mankuwar has stated that one day she saw that both the accused persons were sleeping in a bed, therefore, she returned. P.W.1 Neerabai, after declaring her hostile on cross examination by A.G.P., has stated that accused Ramlal had advanced some money to Ghasi Ram, he was demanding his money. One day he came in drunken condition abusing Ghasi Ram and said that his money be returned to him, otherwise, he will administer the poison and after consuming the same, he will die. But in para 8 this witness has denied that she was knowing that accused persons were in illicit relationship. In para 12, this witness has further stated that she did not disclose to the Police the fact that accused said he will bring the poison and give it to Ghasi Ram and he will die after consuming the same. Therefore, this is an improvement in her court evidence which cannot be relied. This witness in the cross examination has stated that till Ghasi Ram was taken to hospital, he was conscious but none of the witnesses has stated that Ghasiram disclosed to them that accused Ramlal has administered poison to him mixed with liquor nor any witness has stated that when Ghasi Ram was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conscious, why enquiry was not made from him as to what has happened to him.

(7) Even though in her evidence P.W.3 Mankuwar has stated that one day she saw the accused persons in compromising position but there is no evidence to the effect that in fact she disclosed this fact to the deceased, on account of this there was some quarrel between the accused and deceased and that is why the accused persons have administered poison to the deceased. Except the circumstance, there is no material on record to show that the accused Ramlal and Mayawati were having any grudge against the deceased Ghasi Ram or they were angry with Ghasi Ram and that is why, they wanted to eliminate Ghasiram. Therefore, even the prosecution has not been able to establish the motive of the accused to commit the murder of Ghasiram.

(8) In this case, as far as the death of Ghasi Ram on account of administration of poison is concerned, P.W.7 Dr.P.K. Gupta has stated that he conducted the postmortem on the body of deceased on 08.12.2000. He has further stated that both the lungs, wind pipe and membrane of heart were congested, heart was full of blood, all the intestine membranes, lever were congested. Brinjal colour liquid was present in the stomach from which the smell was emanating. Visceras were preserved. According to him, the cause of death was on account of consumption of insecticide and his report is Ex.P.10. A perusal of the *Panchnama* body Ex.P.8 also shows that froth mixed with

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

blood was coming out from the nostrils and mouth of the deceased and the *Panchas* were of the opinion that the death of Ghasiram was on account of consumption of poison. Even P.W.1 Neera Bai has also stated that when she reached to the house of Ghasi Ram, she saw that the foul smell was emanating and froth was coming from the mouth of deceased. P.W.2 Sanilal, a boy aged about 10 years, who is son of the deceased, has also stated that his father and Ramlal consumed the liquor therefore, from the above evidence it is established that the death of Ghasi Ram was on account of consumption of poison. Even though in this case the F.S.L. report is there, but that has not been tendered into evidence. No question has been put to the accused persons in their statement u/s 313 Cr.P.C., in respect of F.S.L. report, therefore, it cannot be used against the accused as serious prejudice has been caused to the accused persons on account of non-putting of questions to the accused persons regarding contents of the report.

(9) As far as the question of administration of the poison by the accused person is concerned, in this case, one witness namely Sanilal (P.W.2), son of deceased aged about 10 years, has been examined by the prosecution to establish that the accused Ramlal mixed some poisonous substance in the liquor and the same was given to Ghasi Ram for consumption. On perusal of the evidence of Sanilal (P.W.2), merely on the basis of evidence of this witness, the prosecution has not been able to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

establish beyond reasonable doubt that in fact the accused persons mixed some poisonous substance in the liquor and thereafter the same was given to the deceased Ghasi Ram by Ramlal. P.W.2 Sanilal has stated that accused Ramlal used to reside in their house because he is the son of his maternal uncle. On the fateful day, his mother along-with Ramlal went to fare in village Teeboudi. He along-with his father also went to the said village fare. His father enquired from them as to how they were together then his mother replied that she went to see the Drama, on which his father gave beating to her, then his mother replied that she will commit suicide. Next day, when he along-with his father and mother were returning, accused Ramlal also accompanied them. His father purchased liquor and *Samosa*. The accused Ramlal put the liquor in a stainless steel glass. He mixed some medicine in the liquor and gave it to his father. Ramlal sent him for washing the clothes. When he returned he saw his father was sleeping but he was writhing and accused Ramlal and his mother were leaving the house, therefore, Neerabai and others brought them back. But in the cross examination, this witness has stated that when the liquor was purchased, he was with his father, thereafter they returned to their house, *Samosa* was given to him. Thereafter he started playing and about after one hour he returned, when he returned his father was sleeping. It is correct to say that when he saw that his father was sleeping, he went to wash the clothes. Again he has stated that it is incorrect to say that when the accused

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and his father were consuming liquor, he was not at the residence. It is correct to say that his father and accused Ramlal were consuming liquor in side the house. Therefore, in the cross examination, this witness has stated that after taking *Samosa*, he went for playing and he returned after one hour. If it is so, it was difficult for this witness to see the accused mixing some poisonous substance in the liquor. There is no other evidence to show that the accused mixed the poisonous substance in the liquor. Therefore, the above evidence of this witness cannot be relied upon that in fact he saw the accused while mixing poison in the liquor.

(10) As far the question that the accused had poison in his possession is concerned, there is no evidence on record to establish that the accused had poison in his possession. So far as the accused had opportunity to administer the poison to the deceased is concerned, except the evidence of Sanilal (P.W.2), a boy aged about 10 years, there is no other evidence to show that the accused had opportunity to administer poison and the evidence of Sanilal has been discussed earlier, which does not inspire confidence of the Court regarding administration of poison by accused Ramlal to the deceased Ghasi Ram.

(11) The other circumstance which has been argued by learned counsel for the State that after consuming liquor, when Ghasi Ram was sleeping and writhing, the accused persons left the house alongwith their belongings and they were brought back by

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आदेश पत्रक (पूर्वानुबद्ध)

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	the villagers, therefore, the conduct of the accused persons indicates their involvement in the crime in question. In the first instance, P.W.1 Neera Bai in examination-in-chief itself has Stated that the accused persons were standing along with bundle of clothes near the drain, she went there and asked Mayawati that children are weeping on which Mayawati replied that her husband had consumed liquorand he is lying after consuming liquor, she refused to return back, on which, she alongwith Mankuwar, Sirmati, Fool Kunwar brought Mayawati & Ramlal, thereafter they took Ghasi Ram to the hospital. This sole conduct of the accused persons is not a strong circumstance to infer that the accused persons had administered the poison. This suspicion however strong that cannot take place of the proof and for this, we are fortified in our view by the judgment of the ***Apex Court in the matter of Swinder Singh –vs- State of Punjab, AIR 1992 S.C. 669*** in which it has been held that the entire edifice of the prosecution is rested only on circumstantial pieces of evidence. Those circumstances are that (i) there was a strong motive for the appellant to liquidate the deceased; (ii) both the appellant and the deceased were seen together before and after the occurrence; and (iii) the suspicious conduct of the appellant before and after the occurrence led to an illation of his guilt. After discussing these points the Court held that there is strong suspicion against the appellant but as pointed out by the Court in ***Pabitar Singh –vs-State of Bihar AIR 1972 S.C. 1899,*** although there	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

may be grave suspicion against an accused person, still the prosecution is bound to establish facts from which the Court can reasonably arrive at a conclusion that the offence was committed by the accused. Therefore for the foregoing reasons, we are of the considered opinion that the prosecution has utterly failed in establishing the crime against the accused persons that they are the persons who administered poison to the deceased and as a result of which, Ghasi Ram died. Therefore, the conviction of the accused appellant cannot be sustained.

(12) Before us, only the appeal of accused Ramlal is there and even on enquiry from the Registry, the Addl. Registrar (Judl) reported that as per the record, no appeal has been preferred by accused Mayawati and as per the discussion, the prosecution has utterly failed to establish the crime against both the accused persons Ramlal and Mayawati. Even there is no iota of evidence against Mayawati that in any manner she was an accomplice to administer poison to the deceased. Even P.W.2 Sanilal has not stated that Mayawati was party with Ramlal in administration of the poison. Therefore, on the same footing accused Mayawati is also entitled for benefit of acquittal which the accused Ramlal is entitled in this appeal. In this regard, we are fortified in our view by the judgment of the Apex Court in the matter of ***Vajrapu sambayya Naidu and others –vs- State of A.P. and others, (2004) 10 SCC 152 (para 23)*** in which the Apex Court held that for some reasons the accused who have not preferred

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

appeals before the Court, in the interest of justice, they are also entitled to the benefit of the said judgment. Hence Their Lordships ordered the acquittal of similarly placed accused persons also, in the said case.

(13) In the matter of ***Mohinder Singh and another –vs- State of Punjab and others (2004) 12 SCC 311 (Para 18)*** the Apex Court further held that even if any accused has not filed the appeal and the co-accused who have filed the appeal is acquitted but the case of the accused who has not filed the appeal on the same footing then the benefit of the acquittal which is granted to the appellant has to be extended to those accused persons also because on an evaluation of evidence led by the prosecution, no conviction of any accused is possible. Therefore, even though accused Mayawati has not filed any appeal, but there is no iota of evidence against her for her involvement in the crime, therefore, she is also entitled for acquittal. Accordingly, the appeal filed by Ramlal succeeds. He is acquitted of the charge u/s 302 read with section 34 of I.P.C. The conviction and sentence imposed upon him are set aside. He is stated to be in detention since 10.12.2000. Therefore, he be set at liberty forthwith, if not required in any other case. Accused Mayawati is also acquitted of the charge u/s 302 read with section 34 I.P.C. The conviction and sentence imposed upon her are also set aside. She is said to be in detention from the same date.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	She should also be set at liberty, if not required in any other case. Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge
Rao		